IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO.6591 of 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr. Umesh J. for the Applicants/Petitioners
Mr. C.R. Sonawane, A.G.P., for Respondent Nos. 1 and 5.
Mr. A.Y.Sakhare, Senior Counsel with Ms. Varsha Palav for Respondent Nos. 2 and 3.
Ms. Chhaya Bagat i/b. Shukla & Shukla for the Respondent NO.6.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.

DATED : 1st February, 2005
P.C.

. Rule. Respondent Nos. 1, 5, 2, 3 and 6 waive notice. Notices were issued to other Respondents who are not present. Even otherwise the order to be passed will not be adverse to their interest. In the light of that the following order.

2. The petitioner-Secretary of The Deccan Kamgar Bachhav Samithi has filed the present petition impugning the order dated 18th March, 2004 whereby the Respondent No.4 has rejected the application filed by the petitioners and independently also by Respondent No.2 on behalf of the petitioners has been rejected. It is the contention of the petitioner that the

Respondent No.3, a Co-operative Society having gone into liquidation they are entitled to payment of unpaid salary and terminal dues as creditors of respondent No.3. They had filed their claim before the Respondent No.2 who had been appointed as Liquidator. There is some dispute whether it is Liquidator or the Respondent NO.4 who can ascertain the claims of the creditors in a case where a Co-operative Society is wound up. The view taken by the Debt Recovery Tribunal and the Appellate Tribunal is that it is the respondent NO.4 who has jurisdiction to the exclusion of Respondent No.2. The Respondent No.2 has challenged the said orders that it is the Respondent No.2 who has the jurisdiction to make payment to the creditors considering the provisions of the M.C.S. Act. That issue is presently pending before another learned Bench of this Court. For the view to be taken it is not for us to wait for the outcome of the said petition.

3. The claim by the petitioners is as creditors. Whether they be secured or otherwise will be an issue to be considered by Respondent NO.4, who is presently exercising jurisdiction and in the event the Division Bench holds otherwise then

Respondent No.2. It is contended on behalf of the petitioners that in Writ Petition No.5293 of 2004 disposed of on 11th August, 2004 a learned Division Bench of this Court has laid down guide-lines for payment of dues amongst others of workmen. It is submitted that pursuant to these guide-lines the Debt Recovery Tribunal has framed the Rules.

4. It really not necessary for us to go into the merits of the matter for the view to be taken. Admittedly the workmen represented by the petitioner union are creditors. They are entitled to file their claims before the Respondent No.4, if the respondent No.2 has no jurisdiction to entertain the claims. The Respondent No.4 is, therefore,bound to consider the claim filed by the petitioners independently or as filed by the Liquidator on their behalf. Considering that the impugned order is clearly without jurisdiction and is liable to be set aside. In the light of that the following order:-

(i) The impugned order dated 18th March, 2004 is set aside. The Respondent NO.4 presently exercising jurisdiction is directed to consider Exhibit 18 as filed by

the workers and/or the claim of Respondent NO.2 filed on behalf of the workers and thereafter to dispose them of with the claim of other creditors according to law. It is made clear that the petition to be decided by the Authority under the D.R.T. Act who is competent to decide such claims. For the sake of convenience we have only referred to respondent NO.4. It is made clear that the petition will be heard by the Competent Authority competent to decide the said issue.

(ii) Rule made absolute accordingly.

No order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)